

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

THOMAS DOUGLAS, as Administrator of the)
Estate of SEBERA GAYLE DOUGLAS,)
deceased,)

Plaintiff,)

vs.)

TMA FOREST PRODUCTS GROUP, et al.)

Defendants.)

**CASE NUMBER:
2:06-cv-188-WKW-SRW**

**DEFENDANT D & D LUMBER COMPANY, INC.'S
OPPOSITION TO PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT
AND MOTION TO DISMISS**

Defendant D & D Lumber Company, Inc. ("D & D Lumber"), by its attorneys, moves the Court to deny Plaintiff's Request for Entry of Default and dismiss D & D Lumber in light of the Court's ruling that it was fraudulently joined. In support thereof, D & D Lumber states as follows:

1. Plaintiff filed the Complaint in the Circuit Court of Covington County, Alabama on January 30, 2006, naming Pactiv Corporation, Louisiana-Pacific Corporation, and D & D Lumber as defendants.

2. On February 28, 2006, Pactiv and Louisiana-Pacific removed this case to this Court because D & D Lumber was fraudulently joined.

3. On April 7, 2006, Plaintiff filed the Motion to Remand. Pactiv and Louisiana-Pacific responded on May 5, 2006, showing that there were in fact two separate and distinct entities named D & D Lumber Company, Inc., and that the D & D Lumber entity sued by Plaintiff was merely a name-saver corporation with no connection to the facility.

4. Plaintiff filed a Request for Entry of Default against D & D Lumber on May 9, 2006.

5. On May 12, 2006, the Court denied Plaintiff's Motion to Remand. The Court held that "D & D Lumber Company, Inc., doing business as Lockhart Lumber Company, is fraudulently joined, as it is uncontroverted that Defendant never controlled, operated, owned, or managed the site from which the allegations in this action arise." Order at ¶ 2.

6. Accordingly, the Court determined that there is no possibility that Plaintiff can prove a cause of action against D & D Lumber.

7. This ruling is the law of the case. To the extent that the Court's May 12, 2006 Order did not already do so, D & D Lumber should be dismissed from this case.¹

WHEREFORE, D & D Lumber requests that the Court enter an Order:

- (1) Denying Plaintiff's Request for Entry of Default; and
- (2) Dismissing D & D Lumber Company, Inc., doing business as Lockhart Lumber Company, Inc., with prejudice.

¹ There are many more additional grounds upon which this Court could appropriately dismiss D & D Lumber from this matter, one of which is Plaintiff's failure to appropriately serve D & D Lumber with adequate process. However, given that this Court has already held that D & D Lumber is a fraudulently joined party (and thus cannot be liable for any of the conduct alleged in the Complaint), D & D Lumber believes that it is unnecessary to raise in detail such issues. To the extent that the Court would like further discussion relating to the factual basis of the defective nature of process and service of process upon it, D & D Lumber requests that the Court give it leave to brief same.

Respectfully Submitted,

s/ E. Bryan Nichols

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2006, I served the foregoing upon the following persons via U.S. Mail:

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